

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

PLAINTIFF,

-VERSUS-

SECOND AMENDED COMPLAINT

CIVIL ACTION

CASE No.: 6:16-cv-06206

JURY TRIAL DEMANDED

ANTHONY J. ANNUCCI, Acting Commissioner,
CHAD BESCLER, Correction Officer,
PAUL CHAPPIUS, Jr., Superintendent,
JEFFERY CLAFLIN, Sergeant,
A. COLES, Correction Officer,
C. DIEGO, Captain,
JOHN DOE, AKA "TINY" Correction Officer,
DONELY, (ORC)
G. KELLER, Captain,
TIMOTHY PERRY, Correction Officer,
PAUL PICCOLO, Deputy Supt. for Security,
B. SCHIEBER, Correction Officer,
S.J. WENDERLICK, Deputy Supt. for Security,

DEFENDANTS.

PLEASE TAKE NOTICE, that enclosed is an original second amended complaint filed in this action as a matter of course, adding one John Doe Also Known as "Tiny" defendant and adding seven defendants dismissed without prejudice in amended complaint and adding new counts, pursuant to Rule 15(a), Federal Rules of Civil Procedure.

Plaintiff states:

JURISDICTION AND VENUE

1. That plaintiff institutes these proceedings and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. § 1344 to obtain the costs of suit, including reasonable attorney fees, and damages suffered by plaintiff and caused by defendants' violation of his rights guaranteed in

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the Eighth and Fourteenth Amendments to the Constitution of the United States and by Federal law, particularly 42 U.S.C § 1983.

2. That this Court also has jurisdiction of this action under 28 U.S.C. § 1331, in controversy arises under the First, Fourth, Eighth, and Fourteenth Amendments of the Constitution of the United States.

3. That the violation of plaintiff's rights was committed within New York State.

PARTIES

4. That plaintiff Darrell Gunn, D.I.N. 03-B-2443 is a citizen of the United States of America and was at all times relevant herein a prisoner of New York State Department of Corrections and Community Supervision, incarcerated at the Elmira Correctional Facility, P.O. Box 500, Elmira, New York 14902.

5. That defendant ANTHONY J. ANNUCCI, Acting Commissioner, was at all times relevant herein the duly appointed qualified and acting commissioner of the New York State Department of Corrections and Community Supervision, and is at all times relevant herein was a resident of Albany County, Albany, New York.

6. That defendant PAUL CHAPPIUS, JR., Superintendent, was at all times relevant herein the duly appointed, qualified and acting superintendent of the Elmira Correctional Facil-

ity, and is at all times relevant herein was a resident of Chemung County, Elmira, New York.

7. That defendant PAUL PICCOLO, Deputy Superintendent for Security Services, was at all times relevant herein the duly appointed, qualified and acting Deputy Superintendent for Security Service of the Elmira Correctional Facility, and is at all times relevant herein was a resident of Chemung County, Elmira, New York.

8. That defendant S.J. WENDERLICH, Deputy Superintendent for security Services was at all times relevant herein the duly appointed, qualified and acting Deputy Superintendent for Security Services of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

9. That defendant C. DIEGO, Captain was at all times the duly appointed, qualified and acting Captain of the Elmira Correctional Facility and is at all times relevant was a resident of Chemung County, Elmira, New York.

10. That defendant G. KELLER, Captain was at all times relevant herein a duly appointed, qualified and acting Captain of the Elmira Correctional Facility and is at all times relevant herein was a resident of Chemung County, New York.

11. That defendant JEFFERY CLAFLIN, Sergeant was at all times relevant herein a duly appointed, qualified and acting sergeant of the Elmira Correctional Facility, and at all times relevant herein was resident of Chemung County, Elmira New York.

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12. That defendant DONELY, Offender Rehabilitation Coordinator (ORC) was at all times relevant herein a duly appointed, qualified and acting Offender Rehabilitation Coordinator (ORC) of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

13. That defendant CHAD BESCLER, Correction Officer was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

14. That A. COLES, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

15. That defendant JOHN DOE, Also Known as "TINY" Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

16. That defendant TIMOTHY PERRY, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

17. That defendant B. SCHIEBER, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

18. That defendants ANTHONY J. ANNUCCI, Acting Commissioner, CHAD BESCLER, Correction Officer, PAUL CHAPPIUS, JR., Superintendent, JEFFERY CLAFLIN, Sergeant, A. COLES, Correction Officer, C. DIEGO, Captain, JOHN DOE, Also Known as "TINY" Correction Officer, DONELY, Offender Rehabilitation Coordinator (hereinafter ORC), G. KELLER, Captain, TIMOTHY PERRY, Correction Officer, PAUL PICCOLO, Deputy Superintendent for Security Services, B. SCHIEBER, Correction Officer, S.J. WENDERLICH, Deputy Superintendent for Security Service are sued individually. Relief is sought against each defendant as well their agents, assistants, successor, employees, and persons acting in concert or cooperation with them or at their direction or under their supervision.

19. That at all relevant herein, the defendants ANTHONY J. ANNUCCI, Acting Commissioner, CHAD BESCLER, Correction Officer, PAUL CHAPPIUS JR., Superintendent, JEFFERY CLAFLIN, Sergeant, A. COLES, C. DIEGO, Captain, JOHN DOE, Also Known as "TINY," Correction Officer, DONELY, ORC, G. KELLER, Captain, TIMOTHY PERRY, Correction Officer, PAUL PICCOLO, Deputy Superintendent for Security Services, B. SCHIEBER, Correction Officer, S.J. WENDERLICH, Deputy Superintendent for Security Services and their agents, assistants, and employees acted pursuant to

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the policies, regulation or decisions officially adopted or promulgated by those in the New York State Department of Corrections and Community Supervision whose acts may fairly be said to represent official policy or were pursuant to governmental custom of the New York Department of Corrections and Community Supervision.

20. That at all times relevant herein, defendants have acted under the color of authority of the law of New York State or in active concert with such defendants who are so acting

PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuit in state or federal court dealing with these same facts involved in this action?
YES.

1. Name(s) of the parties to this other lawsuit:
Plaintiff: DARRELL GUNN 03-B-2443
Defendant: STATE OF NEW YORK (T. PERRY, CORRECTION OFFICER)
2. COURT: STATE OF NEW YORK COURT OF CLAIMS
3. Claim No. 124108
4. The approximate date the action was filed: April 9, 2014.
5. Name of Judge whom case was assigned.
Hon. Catherine C. Schaewe, J.
6. Disposition (consolidated) dismissed
7. Name(s) of the parties to this other lawsuit:
Plaintiff: DARRELL GUNN 03-B-2443

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Defendant: STATE OF NEW YORK (JEFFERY CLAFLIN,
Sergeant)

8. COURT: STATE OF NEW YORK COURT OF CLAIMS

9. Claim No. 124149

10. The approximate date the action was filed: April 16,
2014.

11. Name of Judge whom case was assigned

Hon. Catherine C. Schaewe, J.

12. Disposition: (consolidated) dismissed.

13. Name(s) of the parties to this other lawsuit

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: STATE OF NEW YORK (CHAD BESCLER,
Correction Officer)

14. COURT: STATE OF NEW YORK COURT OF CLAIMS

15. Claim No. 125097

16. The approximate date the action was filed: October
24, 2014.

17. Name of Judge whom case was assigned.

Hon. Catherine C. Schaewe, J.

18. Disposition: (consolidated) dismissed.

19. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: STATE OF NEW YORK (CHAD BESCLER AND
(TIMOTHY PERRY)

20. COURT: STATE OF NEW YORK COURT OF CLAIMS

21. Claim No. 124009

22. The approximate date the action was filed: March
24, 2014.

23. Name of Judge whom case was assigned.

Hon. Catherine C. Schaewe, J.

24. Disposition: (consolidated) Dismissed.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

No.

COUNT ONE

25. That on March 29, 2013 plaintiff was enroute to recreation location-Gymnasium at approximately 7:00 p.m. in the G-Block Pivot, Main Hall-Laundry Corridor.

26. That plaintiff turned right walking through magnetometer on the left side of corridor--compulsorily for all prisoners to walk through enroute to recreation location.

27. That meanwhile, CHAD BESCLER, Correction Officer was standing at magnetometer. Also, TIMOTHY PERRY, Correction Officer was standing off to right and near the wall on right side of corridor and at the end of magnetometer.

28. That in addition JEFFERY CLAFLIN, Sergeant was standing near TIMOTHY PERRY, Correction Officer.

29. That simultaneously, without any detection, alarm, and or signal plaintiff exited magnetometer.

30. That here TIMOTHY PERRY, Correction Officer signaled plaintiff for a needless pat frisk without giving plaintiff a reason per New York State Department of Corrections and Community Supervision (hereinafter DOCCS) Departmental Directive #4910 § B-2-a (4),(5).

31. That indeed plaintiff placed both his hands on wall, in so doing, T. PERRY, Correction Officer ordered plaintiff to step back further. Plaintiff complied.

32. That hereupon C.O. T. PERRY violently and nefariously kicked plaintiff in right foot.

33. That T. PERRY, Correction Officer brutal and barbaric actions are contrary to DOCCS Departmental Directive #4910 § III Personal Searches, which states in part:

The employee conducting a personal search must assure its thoroughness and not to offend the dignity of the inmate being searched.

34. That at that time, plaintiff's right foot began to hurt swell-up. The pain was intense and sharp and throbbing.

35. That TIMOTHY PERRY, Correction Officer unprovoked committed battery against plaintiff.

36. That for this reason, plaintiff immediately stepped back even further. Even so, he was losing his balance.

37. That so now TIMOTHY PERRY, Correction Officer began removing the items from plaintiff's pant pockets, viz., ink pen, ID, phonebook, and handkerchief.

38. That then TIMOTHY PERRY, Correction Officer grabbed plaintiff's underwear boxers and violently pulled up into the groin and rectum. Herewith, C.O. PERRY, similarly, repeated, violently pulled plaintiff's pant into his groin and rectum.

39. That needless to say, plaintiff felt horrible

pain.

40. That consequently, plaintiff states: "I'm in pain!"

41. That in response, "shut the fuck-up!" said, TIMOTHY PERRY, Correction Officer.

42. That "you pulled my underwear into my groin area!" Plaintiff's remonstrance was ignored.

43. That meanwhile, TIMOTHY PERRY, Correction Officer, is violently pat frisking plaintiff, in sum, touching, rubbing, grabbing, and squeezing plaintiff's extremities, chest, genitals, buttocks, and clothes.

44. That as it happens, TIMOTHY PERRY, Correction Officer violently grabbed plaintiff's genitals--as a result, plaintiff moved his leg distraughtly. In effect, C.O. PERRY held on to plaintiff genitals at the same time, stating: "I'm not grabbing you."

45. That hereto, together, as impugment of plaintiff's remonstrance the incorrigible TIMOTHY PERRY, Correction officer immediately once again grabbed plaintiff's underwear boxers and violently pulled up, then, repeated again further into his groin and rectum.

46. That sure enough TIMOTHY PERRY, Correction Officer wantonness and unnecessary infliction of undue hardships caused plaintiff ineffable pain.

A violation of U.S. Constitution Fourth and Eighth Amendment

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47. That suddenly plaintiff looked to the left undoubtedly to see sergeant JEFFERY CLAFLIN standing, thereabout two feet away witnessing this, whom, condoned and allowed this atrocious behavior.

48. That all things considered, plaintiff's conscience was in shock to see Sgt. CLAFLIN, concomitantly participating in the pat frisk, in effect, intentionally and deliberately using his body to shield/block potential witnesses from observing the pat frisk and sexual assault.

49. That, noting that, TIMOTHY PERRY, Correction Officer ordered plaintiff to face forward. Plaintiff complied.

50. That, most critically TIMOTHY PERRY, Correction Officer still for his sexual gratification again began to needlessly maliciously and sadistically and violently rub and touch and grab and squeeze plaintiff's genitals, rectum, and buttock malignantly back and forth, with both his hands at the same time.

51. That at that same time, plaintiff stood agahst as C.O. PERRY'S finger penetrated his rectum through plaintiff's clothes, and, in so doing, caused plaintiff unwarranted wanton infliction of pain and serious physical injury and psychological trauma and emotional duress, among other things

A violation of the United States Constitution Eighth Amendment.

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52. That with this in mind, plaintiff felt despair and ineffable pain, and humiliation, anger, degradation, embarrassment, ashamed, insecure, dehumanized, mental anguish, and loss of dignity.

53. That but then, TIMOTHY PERRY, Correction Officer removed plaintiff's right sneaker, checked it. CHAD BESCLER, Correction Officer assisted, whom, ran a hand held metal-detector wand over the sneaker, whereupon, no alarm or reaction what-so-ever.

54. That hereto, T. PERRY, Correction Officer used both his hands to check plaintiff foot.

55. That T. PERRY, Correction Officer, placed the sneaker on the floor. Telling plaintiff to place his foot back inside. Plaintiff complied.

56. That TIMOTHY PERRY, Correction Officer and CHAD BESCLER, Correction Officer both similarly did plaintiff's left foot as noted above.

57. That TIMOTHY PERRY, Correction Officer, returned the contents of plaintiff's pockets viz., ink pen, ID, phonebook, and handkechief.

58. That hereupon, TIMOTHY PERRY, Correction Officer ordered plaintiff, "take it back to your cell."

59. That plaintiff, immediately asked C.O. PERRY, "What is your name?"

60. That TIMOTHY PERRY, Correction Officer in response, "PERRY" -- wherewith in innuendo, "make sure you get it right."

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The constitutional basis for this claim under 42 U.S.C. § 1983 is the Fourth Amendment; Eighth Amendment; and Fourteenth Amendment.

61. That the acts of the defendants, and each of them, subjected plaintiff to unreasonable search in violation of the Fourth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

62. That the acts of defendants, and each of them subjected plaintiff to cruel and unusual punishment causing plaintiff injuries, including rectum hemorrhoid lasting over six months, soreness, swelling, internal bleeding, burning, discomfort, abrasion, still, on-going, irritation during bowel movements and to suffer extreme physical pain and mental anguish and humiliation and degradation, depression, stress, loss of sleep, nightmares, anxiety, embarrassment, emotional duress, and anger, a life changing episode, permanently mentally scarred, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$5,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees, and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution

of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$5,250,000;

c) grant punitive damages to plaintiff in the sum of \$10,000,000;

d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this claim. Grievance Number EL-40777-13--Title--SEXUALLY VIOLATED PAT FRISK dated April 11, 2013. Superintendent denied grievance. On appeal Central Office Review Committee (hereinafter CORC) did grant Grievant's Request Unanimously Accepted In Part.

Also, this Claim is not a Prison Condition. No Exhaustion requirement is needed.

COUNT TWO

3. That plaintiff adopts by reference paragraphs 1 through 20.

4. That plaintiff searched for witnesses as plaintiff's mind was inundated with fear, pain, and humiliation, only to see JEFFERY CLAFLIN standing there with his hat on.

5. That here, JEFFERY CLAFLIN, sergeant, area supervisor deliberate indifference to plaintiff's risk of serious harm was lucid by showing personal involvement, that is, partici-

pating, using his body to block/shield the pat frisk-sexual assault to any potential witnesses.

66. That certainly Sgt. JEFFERY CLAFLIN neglect of duty was a failure to protect plaintiff's undue hardship ascribed from C.O. PERRY wanton infliction of pain and malicious and sadistic behavior.

67. That overall Sgt. JEFFERY CLAFLIN Ignored plaintiff's statement: "I'm in pain!" During a non-emergency, non-threatening, suspicionless, clothed body pat frisk that was conducted abusively and without a good-faith effort.

68. That in this way, Sgt. JEFFERY CLAFLIN AS area supervisor directly became involved and failed to act, to protect or prevent by disregarding excessive serious risk to plaintiff's health and safety together with grossly negligent in supervising subordinate TIMOTHY PERRY, Correction Officer, whom sexually assaulted claimant.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is the Eighth Amendment and Fourteenth Amendment.

69. That the acts of defendant's and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

70. That the acts of the defendants, and each of them, subjected plaintiff to substantial risk of serious harm--causing plaintiff physical pain and injury, viz., rectum hemorrhoid, soreness, swelling, internal bleeding, burning,

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discomfort, abrasion, still on-going irritation during bowel movements, stomach knots, loss of appetite, nervousness, loss of self-esteem, irritability, and frequent headaches, including traumatic psychological injury, emotional duress, and anger, a life changing episode, permanently scarred, I cannot live a normal life anymore the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$250,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) Permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$5,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for This Claim:

Plaintiff did grieve and appeal this claim. Grievance Number EL-40777-13--Title--SEXUALLY VIOLATED VIA PAT FRISK dated April 14, 2013. Superintendent denied the grievance. On appeal CORC did grant Grievant's Request Unanimously Accepted In Part.

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Also, this claim is not a prison condition. No exhaustion is needed.

COUNT THREE

71. That plaintiff adopts by reference paragraphs 1 through 20.

72. That now, plaintiff heads back to his cell.

73. That at this time, while plaintiff was en-route back to his cell, CHAD BESCLER, Correction Officer, immediately without justification, wearing black boots-inimically and malevolently kicked plaintiff in the left leg shin. In so doing, practically tripping plaintiff and provoking plaintiff to be brutally assaulted by TIMOTHY PERRY, Correction Officer and Sgt. JEFFERY CLAFLIN who were all still there at the magnetometer.

74. That CHAD BESCLER, Correction Officer treated plaintiff without dignity, hence, witnessing plaintiff being sexually assaulted. Hereupon, plaintiff became anathema to C.O. BESCLER, as a result, causing intentional physical and emotional harm.

76. That not only that, CHAD BESCLER, Correction Officer whom witnessing the sexual assault was grossly negligent when he failed to act, to protect or prevent by disregarding excessive risk of serious harm to plaintiff's health and safety.

A violation of United States Constitution Fourteenth Amendment.

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The Constitutional basis for this Claim under 42 U.S.C. § 1983 is the Eighth Amendment and Fourteenth Amendment.

77. That the acts of the defendants, and each of them, subjected plaintiff to a battery in violation of the Eighth Amendment of the United States constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

78. That the acts of the defendants, and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

79. That the acts of the defendants, and each of them, subjected plaintiff to substantial risk of serious harm--causing plaintiff physical pain and injury, viz., rectum hemorrhoid, soreness, swelling, internal bleeding, burning, discomfort, abrasion, irritation during bowel movements, stomach knots, loss of appetite, nervousness, loss of self-esteem, frequent headaches, including traumatic psychological injury, emotional duress, anger, permanently mentally scarred. Which I cannot live a normal life anymore, the full extent of cannot be measured in violation of the Eighth and Fourteenth Amendment of the United States Constitution and caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) Permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or coopera-

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tion with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

b) Grant compensatory damages to plaintiff in the sum of \$1,000,000.

c) Grant punitive damages to plaintiff in the sum of \$2,000,000.

d) Grant plaintiff plaintiff's cost's of this action including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL-40803-13--Title--KICKED AND PROVOKED, dated April 18, 2013.

Superintendent denied the grievance.

On appeal CORC did grant Grievant's Request Unanimously Accepted In Part.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT FOUR

80.

80. That plaintiff adopts by reference paragraphs 1 through 20.

81. That on April 19, 2013 in the evening plaintiff was let out his G-Block, 5-Company, Cell-20 for a F. SANTIAGO, Sergeant grievance complaint EL-40-801-13--ORDERED TO BENCH,

investigation interview.

82. That here at G-Block Sergeant's Office door JOHN DOE, AKA "TINY", Correction Officer and another white male unidentified white male prison guard was waiting for plaintiff. "Be careful, he doesn't like pat frisk," said the unidentified prison guard.

83. That hereupon, JOHN DOE, AKA "TINY", Correction Officer orders plaintiff to place his hands on the wall. Plaintiff complied.

84. That then during this needless pat frisk JOHN DOE, AKA "TINY", Correction Officer for his sexual gratification used his penis through his clothes directly rubbing up against plaintiff's buttocks and legs causing plaintiff to feel the penis of JOHN DOE, AKA "TINY", Correction Officer through his clothes.

85. That JOHN DOE, AKA "TINY", Correction Officer sadistic and wanton behavior caused plaintiff unnecessary infliction of incredible hardships, emotional duress, psychological trauma, degradation, and humiliation, among other things.

A violation of United States Constitution Fourth Amendment, Eighth Amendment and Fourteenth Amendment.

86. That when this sexual abuse pat frisk was over. Plaintiff was ordered into sergeant's office. Plaintiff complied.

87. That then plaintiff sat in chair directly across the desk from sergeant SANTIAGO.

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88. That plaintiff was completely in fear, despair and humiliation.

89. That suddenly, JOHN DOE, AKA "TINY", Correction Officer called into Sgt's office through closed door-- "Sgt. do you need help?" A threatening innuendo.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is the Fourth Amendment; Eighth Amendment; and Fourteenth Amendment.

90. That the acts of defedant JOHN DOE, AKA "TINY", Correction Officer subjected plaintiff to unjustified pat frisk in violation of the Fourth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

91. That the acts of JOHN DOE, AKA "TINY", Correction Officer subjected plaintiff to cruel and unusual punishment, sexual abuse, high levels of stress, mental anguish, anxiety, fear, depression, low self-esteem, hopelessness, despair, emotional duress, nightmares, loss of sleep, needless degradation and humiliation, a life changing episode, permanently mentally scarred contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Consti-tution and caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$500,000;
- c) grant punitive damages to plaintiff in the sum of \$500,000
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did not grieve this Claim.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT FIVE

92. That plaintiff adopts by reference paragraphs 1 through 20.

93. That on April 22, 2013 approx. 7 p.m. at G-Block, 5-Company, Cell-20, A. COLES, Correction Officer, acting in concert, with deliberate indifference denied plaintiff recreation and stating: "If you stop being a dick-head you'll come out."

94. That not suprisingly, A. COLES, Correction Officer to cover-up his wrong doing in grievance complaint investigation submitted false statements in a pattern of DOCCS culture of corruption and dishonesty.

95. that A. COLE, Correction Officer statement to Sgt. SANTIAGO is dated 9-21-13.

96. That A. COLE, Correction Officer, undisguised disdain for plaintiff created an atmosphere of distrust, disbelief, disrespect, and deceit.

97. That plaintiff filing grievance complaints against priosn guards was exercising his right of free speech.

98. That consequently plaintiff was unfairly treated differently, hereupon, causing his civil rights being infringed upon.

A violation of the United States Constitution First Amendment, Eighth Amendment, and Fourteenth Amendment, and Equal Protection Clause.

The Constitutional basis for this claim under 42 U.S.C § 1983 is the First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause.

99. That the acts of the defendant, subjected plaintiff to undue hardships, denied recreation, which consists of telephone, showers, barbershop, among other things, physical pain of headaches, upset digestive tract, nightmares; emotional

pain, high levels of stress, anxiety, fear, depression, anger, despair, humiliation, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy procedure, rules and regulations, the full extent which cannot be measured in violation of the First, Eighth, and Fourteenth Amendments of the United States Constitution and have caused plaintiff to suffer in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$2,000,000;
- c) grant punitive damages to plaintiff in the sum of \$2,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this claim. Grievance Number EL-40868-13--Title--NOT BEING LET OUT/RETALIATION dated May 2, 2013. Superintendent denied the grievance. On appeal CORC did grant Grievant's Request Unanimously Accepted In Part. Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT SIX

100. That plaintiff adopts by reference paragraphs 1 through 20.

101. That on April 26, 2013 A. COLE, Correction Officer, with deliberate indifference denied plaintiff recreation at plaintiff's G-Block, 5-Company, Cell-20.

102. That here A. COLE, Correction Officer made an invidious and impenitent statement: "stop being a dick-head and we'll let you out."

103. That thereafter, on April 30, 2013, A. COLE, Correction Officer, whom stated: "stop making up lies and you'll come out," denying plaintiff evening recreation.

104. That A. COLE, Correction Officer to cover-up his wrong doing submitted false statements.

105. That A. COLE, Correction Officer statement to Sgt. Bynaum is dated 6/4/13.

106. That plaintiff filing grievance complaints against prison guards was exercising his right of free speech.

107. That A. COLE, Correction Officer, undisguised disdain for plaintiff created an atmosphere of distrust, disbelief, disrespect, and deceit.

108. That consequently plaintiff was unfairly treated differently, hereupon causing his civil rights being infringed upon.

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a violation of the United States Constitution First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause.

The Constitutional basis for this Claim under 42 U.S.C. § 1983 is the First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause.

109. That the acts of the defendant, subjected plaintiff to undue hardships, denied recreation, which consists of telephone, showers, barbershop, among other things, physical pain of headaches, upset digestive tract, nightmares; emotional pain, high levels of stress, anxiety, fear, depression, anger, despair, humiliation, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy procedure, rules and regulations, the full extent which cannot be measured in violation of the First, Eighth, and Fourteenth Amendments, and Equal Protection Clause of the United States of America Constitution and have caused plaintiff to suffer damages in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

- b) grant compensatory damages to plaintiff in the sum of \$2,000,000;
- c) grant punitive damages to plaintive in the sum of \$2,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this Claim. Grievance Number EL-40880-13--Title--HARASSED AND DEPRIVED, dated May 7, 2013 Superintendent gave no decision. On appeal CORC did grant GRIEVANTS'S REQUEST UNANIMOUSLY ACCEPTED IN PART. Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT SEVEN

110. That plaintiff adopts by reference paragraph 1 through 20.

111. That it is telling, going back to April 2013, then at DONELY, ORC, office, plaintiff had a Quarterly Interview, at that time, plaintiff reported, "I was sexually assaulted by TIMOTHY PERRY, Correction Officer, during a pat firsk."

112. That here, DONELY, ORC, told plaintiff "file charges against PERRY. I know who he is."

113. That this means that, DONELY, ORC, was well aware, that

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aware, that TIMOTHY PERRY, Correction Officer is a sexual predator and failed to protect plaintiff from substantial risk to serious harm.

114. That more than that, plaintiff made written statement on his Quarterly Review pertaining to the sexual assault he experienced.

115. That DONELY, ORC failed to submit Prison Rape Elimination Act (PREA) investigation report after learning of the sexual assault.

116. That plaintiff's Quarterly Review statement is a genuine issue of material fact.

117. That consequently due to DONELY, ORC neglect of duty plaintiff was unfairly treated when his Quarterly Review was not processed as being a victim of sexual assault by prison guard TIMOTHY PERRY.

118. That thereafter plaintiff experienced repeated sexual assaults, abuses, harassments threats, intimidations, fear, mental abuse, emotional injury, retaliation, prison guard assault and battery, anxiety, injuries, soft tissue problems, post traumatic stress disorder (PTSD), degradation, low self-esteem, depression, hopelessness, and despair.

119. That hereupon causing plaintiff's civil rights to be infringed upon.

A violation of the United States Constitution First Amendment and Eighth Amendment and Fourteenth Amendment--Equal Protection Clause and Due Process Clause.

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The constitutional basis for this claim under 42 U.S.C. § 1983 is the First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause--Failure to Protect, and Due Process Clause.

120. That the acts of the DONELY, ORC subjected plaintiff to undue hardships, substantial risk to serious harm, self-blame, social death, worrying, loss of hair, grinding of teeth, loss of mental energy, ashamed, powerless, hopelessness, insecurity, depression, elevated levels of stress, anxiety, nightmares, loss of sleep, upset digestive tract, despair and dehumanization which he cannot live a normal life anymore, the full extent of which cannot be measured in violation of the First Amendment, Eighth Amendment, Fourteenth Amendment--Equal Protection Clause and Due Process Clause and have caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$1,000,000;
- d) grant plaintiff plaintiff's cost of this action, inclu-

ding reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did not grieve this Claim.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT EIGHT

121. That plaintiff adopts by reference paragraphs 1 through 20.

122. That on June 11, 2013 TIMOTHY PERRY, Correction Officer, working "Center Gate" for his sexual gratification picked plaintiff for a pat frisk by ordering plaintiff to the wall, without giving any reason whatsoever, after plaintiff cleared magnetometer without any alarm, detection, and or signal.

123. That plaintiff was en route to recreation location "Field House."

124. That plaintiff handed shower mesh bag to TIMOTHY PERRY, Correction Officer, and then placed his hands on the wall.

125. That plaintiff was ordered by TIMOTHY PERRY, Correction Officer to step back. Plaintiff complied.

126. That TIMOTHY PERRY, Correction Officer, removed the contents of plaintiff pant pockets, viz., ink pen, phonebook, cigarette rolling papers, eye glasses, and handkerchief.

127. That TIMOTHY PERRY, Correction Officer, began rubbing, touching, squeezing and grabbing plaintiff's body and clothes during the pat frisk with his hands.

128. That and in so doing, forcibly and violently rubbed, touched, grabbed, and squeezed plaintiff's sexual and intimate body parts viz., genitals, penis, scrotum, rectum, and buttocks, with both his hands back and forth. Thus, trying to penetrate plaintiff's rectum intentionally and deliberately, albeit, unsuccessfully.

129. That plaintiff felt horrible pain, despair, humiliated, embarrassed, angry, and mental anguish.

130. That plaintiff looked to his right to see four (4) sergeants in the same area--thereabout three feet away. Also, two prison guards nearby. No one said or did anything.

131. That herewith, TIMOTHY PERRY, Correction Officer, ordered plaintiff to take his property back. Then said, "get the fuck out of here--hurry up!"

132. That plaintiff went up to the "Field House" with group; feeling humiliation and degradation and pain.

133. That plaintiff looked for support from inmates. There was none. Only acknowledgement.

134. That plaintiff went to prison guard to report the sexual assault where there's a sign-up for general library.

135. That this prison guard post is the table near by the magnetometer in the "Field House."

136. That here the prison guard told plaintiff "I don't know what you're talking about."

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137. That plaintiff gave prison guard his ID to sign-up for general library.

138. That prison guard stated: "I'm not taking that. You're not going to library! Grieve me!"

139. That plaintiff felt hopeless. Prison guards "Brotherhood" refused to allow plaintiff to report the sexual assault he just experienced minutes ago.

A violation of the United States Constitution First, Eighth and Fourteenth Amendments, Failure to Supervise Clause, and Failure Failure to Protect Clause, and Equal Protection Clause.

The constitutional basis for this Claim under 42 U.S.C. § 1983 is The First Amendment and Eighth Amendment and Fourteenth Amendment Due Process Clause, Equal Protection Clause, Failure to Supervise Clause, and Failure to Protect Clause.

140. That the acts of the defendant TIMOTHY PERRY, subjected the plaintiff to sexual assault of wanton infliction of pain, viz., soreness, swelling, abrasion, discomfort, and mental anguish, and humiliation, degradation, depression, high levels of stress, loss of sleep, nightmares, anxiety, embarrassment, emotional duress, and anger, the full extent of which cannot be measured in violation of the First Amendment, Eighth Amendment, Fourteenth Amendment, and Due Process Clause and Equal Protection Clause--Failure to Supervise Clause and Failure to Protect Clause of the United States of America Constitution and have caused plaintiff to suffer damages in the sum of \$4,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$4,000,000;
- c) grant punitive damages to plaintiff in the sum of \$4,000,000.
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this Claim. Grievance Number EL-41105-13--Title--SEXUAL ASSAULT WITH FRISK dated June 23, 2013. Superintendent denied grievance. On appeal CORC UNANIMOUSLY DENIED GRIEVANTS REQUEST.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT NINE

141. That plaintiff adopts by reference paragraphs 1 through 20.

142. That on July 26, 2013, plaintiff was sexually

assaulted by B. SCHIEBER, Correction Officer during pat frisk.

143. That plaintiff approximately 3:30 p.m. was en route to "Ball Field" during recreation. Here at "Field House" garage door entrance--magnetometer present was two (2) prison guards and two (2) prison guards near the "Ball Field" entrance. The latter two (2) prison guards was pat frisking prisoners away from the magnetometer.

144. That plaintiff cleared magnetometer without detection and or alarm. Instantly, the other prison guards informed B. SCHIEBER, Correction Officer, "he's the one who writes grievances."

145. That hereupon, B. SCHIEBER, Correction Officer, with deliberate indifference picked plaintiff for a needless and unsupervised pat frisk. Thus, C.O. SCHIEBER never gave plaintiff reason for pat frisk.

146. That no area supervising sergeant was present See, New York State DOCCS Departmental Directive No. 4910 § II, III. B. 2 a (4) and (5).

147. That plaintiff complied by emptying his pockets, in so doing, placing his articles on the table viz., sunglasses, ink pen, and handkerchief.

148. That then plaintiff placed both hands on staircase wall.

149. That hereto, during the pat frisk, B. SCHIEBER, placing his hand between plaintiff's buttock touched plaintiff's buttock touched plaintiff rectum with his hand and finger.

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Hereupon, caused plaintiff to have bowel movement, soreness, and abrasion in the rectum.

150. That unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States of America Constitution Eighth Amendment--Cruel and Unusual Punishment Clause.

151. That concomitantly, B. SCHIEBER, Correction Officer, subsumed in DOCCS arcane "Brotherhood" culture of corruption and dishonesty, with deliberate indifference retaliated wantonly against plaintiff for filing grievances against other prison guards.

152. That herewith, during the pat frisk when B. SCHIEBER, Correction Officer told plaintiff "get your things off the table."

153. That plaintiff picked up his sunglasses, ink pen, and handkerchief. Plaintiff looked at B. SCHIEBER name tag.

154. That hereupon, B. SCHIEBER, Correction Officer, asked plaintiff "what you's looking at?"

155. That in response, plaintiff states, "you!"

156. That in reply , B. SCHIEBER, Correction Officer, asked "why?"

157. That plaintiff responded, "you just touched my asshole! What is your name?" He said, "Schieber" and spelled

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it out "S-C-H-I-E-B-E-R."

158. That "go back to your cell," said B. SCHIEBER, correction Officer.

159. That another prison guard-- white male, standing in same area, also, doing pat frisk states: "lift weights!" as innuendo to plaintiff's protest and complaint of sexual assault, during plaintiff's exiting the pat frisk area and "Field House" entrance.

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160. That en route back to plaintiff's cell. He reported the sexual assault to approximately five (5) prison guards standing at "Center Gate" -- one prison guard was named "Williams."

161. That the prison guards asked: "What happened? Why you going back to your cell?"

162. That "I was just sexually assaulted during a pat frisk,

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I don't feel good," in response, said plaintiff.

163. That the prison guards all chimed in except one. They stated: "Don't come out your cell! Be a man! C.O. Williams states: "don't write grievances!"; "Back in the day writing grievances -- you were labeled a rat!" Stated another prison guard. They all laughed and berated plaintiff.

164. That they ordered

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to return to his cell. Plaintiff complied.

165. That plaintiff immediately signed-up for sickcall.

166. That thereafter that same evening B. SCHIEBER, correction Officer took 5-company evening chow list. Plaintiff requested chow and law library 6:30 p.m. callout. In any event, plaintiff was not let out.

167. That later while plaintiff was receiving his legal mail he was

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he was informed by prison guard "you're
Keep lock, I do not know why."

168. That in truth,
plaintiff received no feed-up tray.

169. That on July 27,
2013, approximately 7:30 p.m. plain-
tiff received a false document Tier
II Misbehavior report authored by B.
SCHIEBER, correction officer in re-
taliation because plaintiff reported
the sexual assault.

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170. That the false document Tier II False Misbehavior report charged plaintiff with "threats towards staff" and "failure to follow an order."

171. That unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States of America constitution First Amendment -- Freedom of Speech --

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Retaliation Clause

The constitutional basis for this claim under 42 U.S.C. section 1983 is the First Amendment -- Freedom of Speech Clause - Retaliation Clause; and Eighth Amendment Cruel and Unusual Punishment Clause.

172 That the acts of defendant B. SCHIEBER, Correction Officer subjected plaintiff to undue

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hardships, inhumane horrendous pat Frisk,
sexual assault, retaliatory False mis-
behavior report, hopelessness, high levels
of stress, low self-esteem, anxiety,
Fear, depression, anger, despair, humili-
ation, and needless degradation, the
full extent of which cannot be measured
in violation of the First Amendment.-

Freedom Speech Clause -- Retaliation

Clause and Eighth Amendment's --

Cruel and Unusual Punishment

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clause of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$5,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities

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guaranteed to the plaintiff under the Constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$1,000,000;

c) grant punitive damages to plaintiff in the sum of 1,000,000;

d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

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Plaintiff did grieve and appeal this claim.

Grievance Number GH-80561-15 - Title --

FALSE MBR.

Superintendent denied the grievance

On appeal CORC Unanimously Denied

Grievant's Request.

Also, this claim is not a prison condition.

No exhaustion requirement is needed.

COUNT TEN

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173. That plaintiff adopts
by reference paragraphs 1 through 20.

174. That plaintiff, at
the time, in the months of December
2013 and January 2014, along with
C-Block odd/uneven companies 1, 3,
5, 7 were being Freezed out" as
cruel and unusual punishment and re-
taliation. Including the dates Dec. 16,
24, 30, 31, 2013, and Jan. 2, 3, and
4, 2014.

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175. That plaintiff at this time could not protect himself from the "Polar vortex" brutal cold weather system because the nefarious and incorrigible prison guards refused to close the windows.

176. That unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United

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States of America Constitution Eighth
Amendment -- Cruel and Unusual Punishment
Clause.

177. That plaintiff was
a witness to Mr. Green an inmate
whom was locked at C-Block, 1-Company,
2-cell, unsuccessfully remonstrated
to all prison staff to close the
windows.

178., That in truth, it was

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colder inside our prison cells than the temperature outdoors.

179. That prison guards were wearing hats, gloves and coats to protect themselves from the cold.

180. That most critically, because of his protest. Mr. Green was brutally assaulted by B. SCHIEBER, correction officer, on January 4, 2014.

181. That on January

Page 51

10, 2014, plaintiff, whom was en route to law library callout was targeted for a needless pat Frisk in the main Hallway-- Mess Hall Corridor. Hereupon, B. SCHIEBER, Correction OFFicer with deliberate indifference read aloud for everyone to hear the content of the legal papers.

182. That as a result, plaintiff feels insecure and threatened not to file legal papers out of fear of reprisals and retaliation.

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183. That subsequently plaintiff out of fear did not prepare and file lawsuits in New York State Court of Claims against defendants B. Schieber, Correction Officer, A. Cole, Correction Officer, Donely, ORC, among others, defendants that were dismissed with prejudiced in this Court.

184. That plaintiff's family court matter petition was dismissed solely because prison guard Learner refused to give plaintiff his legal mail.

185. That the above-preceding paragraphs non-frivoulous claims was both prejudiced and hindered respectively when B. SCHIEBER, Correction Officer read aloud with deliberate indifference for everyone to hear plaintiff's legal papers.

186. That unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States of America Constitution First
Amendment--Harassment Clause

187. That notwithstanding, plaintiff notified Mr. Vern Fonda, Inspector General, in writing a letter dated January 24, 2014 of the situation in C-Block and Mr. Green peril circumstance.

188. That thereafter, on or about January 31, 2014, B. SCHIEBER, Correction Officer came to plaintiff cell, C-Block, 1-Company, 5-Ccell.

189. That B. SCHIEBER, Correction Officer acting as a homosexual for his sexual gratification began making sexual advances toward plaintiff by blowing kisses and calling plaintiff "Cinnamon."

190. That later same evening approximately 8 p.m. B. SCHIEBER, Correction Officer, came back to plaintiff's cell and stated: "Cinnamon," why didn't you come out tonight? I'll see you tomorrow," herewith, "he's playing like he's sleep." Telling the prison guard in officers' station.

191. That B. SCHIEBER, Correction Officer, on February 3, 2014, again came to plaintiff's C-Block, 1-Company, 5-Cell.

192. That here, B. SCHIEBER, Correction Officer for his sexual gratification and without justification used his baton on plaintiff's foot, in so doing, to wake-up plaintiff, then began with threats and intimidation states: "hey cinnamon, why didn't you come out today? When you come out your cell I'm going to fuck-you up!" "You little bitch!"

193. That shortly thereafter, B. SCHIEBER, Correction Officer, with deliberate indifference threw a cup of water on plaintiff while plaintiff was lying down in his cell. Witnessing this, CHAD BESCLER, Correction Officer was with him and began laughing at plaintiff.

194. That plaintiff experienced degradation, humiliation, emotional trauma, psychological trauma, depression, low self-esteem, despair, and was treated without dignity.

195. That thereafter, on February 4, 2014, approx. 12 p.m. plaintiff was interviewed by Mr. LOVELACE, Inspector General for DOCCS about B. SCHIEBER, Correction Officer barbaric and brutal unprovoked assault on Mr. Green, prisoner, whom was taken to the "Box" after being assaulted.

196. That this means that, B. SCHIEBER, Correction Officer, was well aware of the Inspector General investigation and repeatedly threatened, harassed, intimidated and retaliated against plaintiff for contacting Inspector General on behalf of Mr. Green, among other things, his wanton and sadistic behavior.

197. That all things considered the above-preceding paragraphs unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States Constitution First Amendment, Harassment Clause--Retaliation Clause; and Eighth Amendment--Cruel and Unusual Punishment Clause.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is the First Amendment--Harassment Clause--Retaliation Clause; and Eighth Amendment--Cruel and Unusual Punishment Clause.

198. The acts of B. SCHIEBER, Correction Officer subjected plaintiff to undue hardships, emotional duress, prolong periods of bitter cold temperatures, substantial risk to serious

harm, self-blame, mental anguish, loss of mental energy, low self-esteem, social death, worrying, loss of hair, grinding of teeth, fear, upset digestive tract, ashamed, powerless, insecurity, hopelessness, depression, loss of sleep, elevated levels of stress, anxiety, despair, and dehumanization which he cannot live a normal life anymore, contrary to legitimate penological justification, correctional goals, and prison policy and procedure and rules and regulation, the full extent of which cannot be measured in violation of the First Amendment and Eighth amendment and have caused plaintiff to suffer damage in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$1,000,000;
- d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this Claim. Grievance complaint #EL-42-42163-14--entitled--HARASSED/THREATENED/LEGAL WORK READ, dated February 4, 2014. Superintendent denied grievance. On appeal CORC Grievant's Request Unanimously Accepted In Part. Also, this Claim is not a prison condition. No exhaustion requirement is needed.

COUNT ELEVEN

199. That plaintiff adopts by reference paragraphs 1 through 20.

200. That TIMOTHY PERRY, Correction Officer, On January 24, 2014, approximately 7:30 p.m. for his sexual gratification, again, sexually assaulted plaintiff during a needless pat frisk.

201. That here at Main Hallway--Mess Hall corridor plaintiff was en route to "Field House," which, at the magnetometer he cleared without incident, detection, alarm, and or signal.

202. That nonetheless, plaintiff was targeted for a pat frisk by unknown white male prison guard.

203. That hereupon, TIMOTHY PERRY, Correction Officer states: "let me get this one." Meanwhile plaintiff feared for his life, safety and health.

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204. That plaintiff

Followed TIMOTHY PERRY, Correction Officer
commands which was "put your hands on
the wall. Step back further."

205. That TIMOTHY PERRY,

Correction Officer, with deliberate indif-

ference repeated wanton and sadistic

behavior states: "you will get with

the program," in innuendo.

206. That immediately,

TIMOTHY PERRY, Correction Officer

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began rubbing plaintiff's intimate and sexual body parts with both his hands including chest. Among other factors, rubbed and touched plaintiff's genitals and penis then rubbed and squeezed buttock for his unrentless homosexual idiosyncrasies.

207. That hereupon unfairly causing plaintiff's civil rights being infringed upon.

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A violation of the United States
Constitution Eighth Amendment - cruel
and Unusual Punishment Clause.

208. That on January 28,
2014, plaintiff's primary care provider
performed PREA medical examine for
the January 24, 2014 Sexual
assault perpetrated by TIMOTHY
PERRY, correction officer,

209. That thereafter,

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TIMOTHY PERRY, correction officer on
February 6, 2014 approximately 3 p.m.
at C-Block, I-Company, 5-cell called
plaintiff "faggot" and in so doing
tormented and degraded and humiliated
plaintiff.

210. That hereupon unfairly
causing plaintiff's civil rights to be
infringed upon.

A violation of the United

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OF America Constitution First Amend-
ment -- Freedom of speech --

Harassment clause -- Retaliation
clause ; Eighth Amendment -- Verbal Harassment

211. That thereafter on
February 8, 2014, approximately 5 p.m.
at plaintiff's C-Block, I-Company,
5-cell location, an unnamed white
male sergeant came to interview
plaintiff about C O B. SCHIEBER.

212. That here, the

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Sergeant conducting the investigation refused to allow an I.G.R.C. representative to give plaintiff advise.

Thus, the sergeant refused to take plaintiff complaint serious. The sergeant did not take any information. The interview lasted approximately one (1) minute.

213. That plaintiff felt hopeless and that his life was in despair suffering from

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depression, anxiety, low self-esteem
and humiliation.

The constitutional basis for
this claim under 42 U.S.C. Section
1983 is the First Amendment,
Freedom of Speech -- Harassment
Clause -- Retaliation Clause;
and Eighth Amendment -- Cruel
and Unusual Punishment Clause.

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214. That the acts of
TIMOTHY PERRY, Correction Officer
Subjected plaintiff to undue hardships,
sexual assault, abuse, retaliation,
emotional duress, substantial risk
to serious harm, self-blame, mental
anguish, loss of mental energy, low
self-esteem, social death, worrying,
loss of hair, grinding of teeth, fear,
upset digestive tract, shame,
powerless insecurity, hopelessness,

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depression, loss of sleep, elevated levels of stress, anxiety, despair and dehumanization which he cannot live a normal life anymore, contrary to legitimate penological justification, correction goals, and Prison Policy and Procedure and Rules and Regulation, the Full extent of which cannot be measured in violation of the First Amendment -- Freedom of Speech clause - Harassment Clause -

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Retaliation Clause, and Eighth Amendment
cruel and Unusual Punishment Clause
and have caused plaintiff to suffer
in the sum of \$ 2,500,000.

WHEREFORE, plaintiff
respectfully prays this Court to:

- a) permanently enjoin the defendants,
their assistants, successors, employees
and persons acting in concert or coop-
eration with them further violating

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the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$ 1,000,000;

c) grant punitive damages to plaintiff in the sum of \$ 1,000,000;

d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

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Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did not grieve and appeal this claim.

Also, this claim is not a prison condition. No exhaustion requirement is needed.

COUNT TWELVE

215. That plaintiff adopts by reference paragraphs 1 through 20.

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216. That B. SCHIEBER, Correction Officer, on February 10, 2014 approximately 3:30 p.m. came to plaintiff's C-Block, I-company, Cell-5 for his sexual gratification as a sexual predator and made sexual advancement toward plaintiff in homosexual idiosyncrasies using both his hands.

217. That shortly thereafter, B. SCHIEBER, Correction Officer, returning, repeatedly for

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his sexual gratification made sexual advancement toward plaintiff. Blows a Kiss into his cell.

218. That soon later, while plaintiff was exiting mess Hall, C O B. SCHIEBER still repeatedly for his sexual gratification and unrelentless wanton and sadistic behavior calls plaintiff "Faggot!"

219. That plaintiff felt ashamed, humiliated, degraded.

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and hopeless knowing that his life is in despair, among other things.

220. That B. SCHIEBER, Correction Officer, on February 11, 2014 approximately 4:30 p.m. made serious threats at plaintiff at plaintiff's C-Block, I Company, 5-cell.

221. That here, B. SCHIEBER, Correction Officer with deliberate indifference states: "Come out your cell to get your ass whipping!"

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223. That plaintiff feels his life, health, and safety was in jeopardy. His life is perilously in despair!

224. That the next day. B. SCHIEBER, Correction Officer, on February 12, 2014 made serious threats at plaintiff's C-Block, 1 company, 5-cell, approx. 4:30 p.m.

225. That here,

Page 73

B. SCHIEBER, correction officer with deliberate indifference began threats with wanton malicious behavior when he states: "hey girl, what are you working on? Don't hide in your cell! Come out tomorrow to get your ass whipping! You're always bitching and writing grievances!"

226. That plaintiff felt his life was in jeopardy, hopeless, emotional duress, and in despair!

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227. That unfairly
causing plaintiff's civil rights being
infringed upon.

A violation of the United
States of America Constitution
First Amendment -- Freedom of speech--
Retaliation clause

228. That C. DIEGO,
Captain, subsumed in DOCCS arcane
"Brotherhood" of corruption and dis-
honesty was well aware of the facts

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of plaintiff's repeated sexual assaults, sexual abuses, sexual harassments, retaliations, intimidations, and treats from statements, reports, and or investigations then failed to act, to protect and or prevent plaintiff from substantial risk to serious harm in order to cover-up the pattern of prison guards wrong doings.

229. That C. DIEGO, Captain, employed in a position of

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control created a custom under which unconstitutional practices occurred of sexual assaults, abuses, and harassment, during pat Frisk and retaliation for reporting sexual abuse and harassment.

230. That the The Correctional Association of New York-Prison Visiting Project (hereinafter CA) visited Elmira Corr. Fac. in March 2010 to assess the programs

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physical facilities, and conditions for both staff and inmates within the prison, among other things.

231. That the CA report on page 13 states: "The response rate for incidents of sexual abuse places Elmira in the top third of all CA-surveyed prisons for frequency of sexual abuse, signifying that the inmates perceive more abuse at Elmira than at other prisons we have

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visited, 10 "

232. That preceding footnote #10 states: "In an August 2010 report Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09, the U.S. Department of Justice Bureau of Statistics ranked Elmira with the third highest rate of staff sexual misconduct in all 167 surveyed male prisons in the U.S.,

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233. That Furthermore,
"Fifty-eight percent of survey
respondents reported experiencing an
abusive pat frisk at least once.
Similar to the average at all
CA-visited facilities. We suggest
that facility administrators examine
this high rate of sexual abuse
between staff and inmates and
among inmates to determine its
root cause and explore methods of

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prevention." A striking point for plaintiff. See, Exhibit A.

234. That with this in mind C. DIEGO, Captain knew that subordinates TIMOTHY PERRY, Correction Officer, Sgt. JEFFERY CLAFLIN, CHAD BESCLER, Correction Officer, A. COLE, Correction Officer, JOHN DOE, AKA "TINY", Correction Officer, and B. SCHIEBER, Correction Officer would act unlawfully and

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have no respect for the rule of law and failed to stop them from doing so.

235. That consequently plaintiff has suffered undue hardships, physical injuries and mental injuries, alike.

236. That G. KELLER, Captain, subsumed in DOCCS arcane "Brotherhood" of corruption and dishonesty was well aware of the facts of plaintiff's repeated sexual assaults,

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Sexual abuses, sexual harassments, retaliations, intimidation and threats from statements, reports, and or investigations then failed to act, to protect and or prevent plaintiff from substantial risk to serious harm in order to cover-up the pattern of prison guards wrong doing.

237. That G.

KELLER, captain employed

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in a position of control created a custom under which unconstitutional practices occurred of sexual assaults, abuses, and harassment, during pat Frisk and retaliation for reporting sexual abuse and harassment. See

Discussion paragraphs 230 - 233

238. That with this

in mind G. KELLER, Captain Knew

that subordinates TIMOTHY PERRY

correction officer, Sgt. JEFFERY

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CLAFLIN, CHAD BESCLER, correction

Officer, A. COLE, correction Officer,

JOHN DOE, AKA "TINY", correction

Officer, and B. SCHIEBER, correction

Officer would act unlawfully and have

no respect for the rule of law and

Failed to stop them from doing so.

239. That again

consequently plaintiff has suffered

irreparable harm and undue hardships,

physical injuries and mental injuries

alike.

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240. That S. J.

WENDERLICH, Deputy Superintendent

For Security Services, Subsumed in

DOCCS arcane "Brotherhood" of

Corruption and dishonesty was well

aware of the facts of plaintiff's

Repeated sexual assaults, sexual

abuses, sexual harassments, re-

talations, and threats from state-

ments, reports, and or investiga-

tions then failed to act, to protect

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and or prevent plaintiff from substantial risk to serious harm in order to cover-up the pattern of prison guard wrong doing.

241. That S. J.

WENDERLICH, Deputy Superintendent for Security Services whom is employed in a position of control created a custom under which unconstitutional practice s occurred of sexual assaults, abuses, and harassments,

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during pat Frisk and retaliation for
reporting sexual harassment. See,

Discussion paragraphs 230-233. Also,
see, Exhibit A.

242. That with this
in mind S. J. WENDERLICH, Deputy
Superintendent for security Services
whom knew that subordinates

TIMOTHY PERRY, Correction Officer,

SGT. JEFFERY CLAFLIN, CHAD

BESCLER, Correction Officer,

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A. COLE, correction officer, JOHN DOE,

AKA "TINY", correction officer, and

B. SCHIEBER, correction officer would

act unlawfully and have no respect for

the rule of law and failed to stop

them from doing so.

243. That again

consequently plaintiff has suffered

irreparable harm and undue hardships,

physical injuries and mental injuries,

alike.

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244. That PAUL

PICCOLO, Deputy Superintendent for

Security Services subsumed in Doccs

arcane "Brotherhood" of corruption

and dishonesty was well aware of the

facts of plaintiff's repeated sexual

assaults, sexual abuses, sexual

harassments, retaliations, intimi-

dations, and threats from statements,

reports grievances and or investigations

then failed to act, protect and or

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plaintiff from substantial risk to serious harm in order to cover-up the pattern of prison guard wrong doings.

245. That PAUL PICCOLO Deputy Superintendent for Security Services whom is employed in a position of control created a custom under which unconstitutional practices occurred of sexual assaults, abuses, and harassments during pat Frisk and retaliation for reporting sexual

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harassment. see Discussion paragraphs 230-233. Also see Exhibit A.

246. That with this in mind PAUL PICCOLO, Deputy Superintendent for security services whom knew that subordinates TIMOTHY PERRY, correction officer, SGT. JEFFERY CLAFLIN, CHAD BESCLER, correction officer, A. COLE, correction officer JOHN DOE, AKA "TINY," correction officer and B. SCHIEBER, correction

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officer would act unlawfully and have no respect for the rule of law and failed to stop them from doing so.

247. That again, consequently, plaintiff has suffered irreparable harm and undue hardships, physical injuries and mental injuries, alike.

248. That PAUL CHAPPIUS, Jr., Superintendent, subsumed in DOCCS arcane "Brotherhood" of

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of corruption and dishonesty was well aware of the repeated sexual assaults, sexual abuses, sexual harassment and retaliations, threats and intimidations through investigation of grievances and appeals, reports and documents by and for the plaintiff and with deliberate indifference refused to take corrective action and or remedy the wrongs.

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249, That PAUL

CHAPPIUS, Jr., Superintendent whom
in a position of control created a custom
under which unconstitutional practices
occurred of sexual assaults, abuses,
and harassment, during pat Frisk,
and retaliation for reporting sexual
abuse and harassment. See Dis-
cussion paragraphs 230-233.
See, also Exhibit A.

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250. That in addition
a genuine issue of material fact exist.
Which means that PAUL CHAPPIUS, JR.
Superintendent, whom cloak of ignorance
has no respect for the rule of the
law and has to held accountable
to all CORC decision. See Exhibit
B.

251. That more than
that PAUL CHAPPIUS, JR.,
Superintendent Failure to supervise

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his subordinates was grossly negligent when he failed to act, protect and or prevent plaintiff from substantial risk to serious harm in collusion with his subordinates to cover-up the pattern of prison guards wrong doings, in so doing, condoning and promoting unprovoked repeated sexual assaults, sexual abuses, sexual harassments, threats, and intimidations against plaintiff, see EXHIBIT C.

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252. That with this
in mind PAUL CHAPPIUS, JR., Superin-
tendent, whom knew that Subordinates
TIMOTHY PERRY, Correction Officer,
SGT. JEFFERY CLAFLIN, CHAD BESLER,
Correction Officer, JOHN DOE, AKA.
"TINY", Correction Officer and B.
SCHIEBER, Correction Officer would
act unlawfully and have no respect
for the rule of law and failed to
stop them from doing so.

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253. That consequently, plaintiff ascribes his undue hardships and needless pain and suffering, injuries and emotional and psychological trauma to PAUL CHAPPIUS, JR., Superintendent.

254. That ANTHONY J. ANNUCCI, Acting Commissioner, subsumed in DOCCS arcane "Brotherhood" of corruption and dishonesty was well aware of the facts of plaintiff being repeatedly sexual assaulted,

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sexually abused, sexually harassed, retaliations, intimidations, and threats from the reports, grievances and appeals, investigations, and statements and failed to take corrective action and or remedy the wrongs, in so doing, condoning and promoting unprovoked repeated sexual assaults, sexual abuses, sexual harassments, threats, and intimidations in order to cover-up his subordinates wrong doings

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against plaintiff. see Exhibit D.

255. That ANTHONY J.

ANNUCCI, Acting Commissioner whom is

employed in a position of control

created a custom under which

unconstitutional practices occurred

of sexual assaults, abuses, and

harassments during pat frisk and re-

taliation for reporting sexual harass-

ment. see Discussion paragraphs

230-233. Also see Exhibit A.

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256. That in addition
a genuine issue of material fact
exist, which means that ANTHONY
J. ANNUCCI. Acting Commissioner, whom
cloak of ignorance has no respect
for the rule of the law and has to
be held accountable to New York
State Correction Law section 112 and
DOECS Directive # 4028A,

257. That with this
in mind ANTHONY J. ANNUCCI,

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Acting Commissioner whom knew that Subordinates TIMOTHY PERRY, Correction Officer, SGT. JEFFERY CLAFLIN, CHAD BESCLER, Correction Officer, A. COLE, Correction Officer, JOHN DOE, AKA "TINY," Correction Officer and B. SCHIEBER, Correction Officer would act unlawfully and have no respect for the rule of law and failed to stop them from doing so.

258. That Consequently

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plaintiff has permanent physical and mental injuries, pain and suffering, including depression, emotional trauma and undue hardships, among other things.

259. That all things considered the above-preceding paragraphs unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States Constitution First, Eighth and

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Fourteenth Amendments - Freedom of Speech

Cruel and Unusual Punishment Clause --

Failure to Protect -- Failure to

Supervise.

The Constitutional basis for this

claim under 42 U.S.C. Section 1983 is

the First Amendment, Eighth

Amendment and Fourteenth Amendments --

Freedom of speech - Retaliation Clause --

Cruel AND Unusual Punishment Clause -

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Equal Protection Clause -- Failure to
Protect and Failure to Supervise.

260. That the acts of the
defendants, and each of them, subjected
plaintiff to undue hardships, substantial
risk to serious harm, loss of mental
energy, low self-esteem, social
death, worrying, loss of hair, grinding,
of teeth, fear, anxiety, high, level
of stress, headaches, hopelessness,
humiliation, upset digestive tract,

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powerless insecurities, depression, nightmares, loss of sleep, despair and dehumanization of repeated sexual assaults, sexual abuses, sexual harassments, retaliations intimidations and threats, hemorrhoids, anal itching, discomfort, and permanently psychologically scarred, which he cannot live a normal life anymore, contrary to legitimate penological justification, correction goals and prison policy and procedure and

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rules and regulation the full extent of which cannot be measured in violation of the First Amendment, Eighth Amendment, Fourteenth Amendment, Due Process Clause And Equal Protection Clause -- Failure to protect and Failure to supervise and have caused plaintiff to suffer damages in the sum of \$ 5,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

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- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them further violating the rights, privileges and the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$ 2,000,000;
- c) grant punitive damages to plaintiff in the sum of \$ 2,000,000;

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d) grant plaintiff plaintiff's
cost of this action, including reasonable
attorney fees.

Exhaustion of Your Administrative

Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Complaint Number EL-4205-14

Entitled-- DISCRIMINATING SLURS/ACTIONS

Dated February 10, 2014.

Superintendent denied the grievance.

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On appeal CORC Grievant's Request

Unanimously Accepted In Part.

Also, this Claim is not a Prison Condition.

No exhaustion requirement is needed.

Dated: June 1, 2017 Respectfully Submitted,
Stormville, New York

Darrell 

DARRELL GUNN, 03-B-2445

Plaintiff, pro se